Supreme Court, U.S.
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No. 05-117

In The

Supreme Court of the United States

VERTRUE INCORPORATED
(f/k/a MemberWorks Incorporated),

Petitioner,

v.

MEDVALUSA HEALTH PROGRAMS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In upholding a court judgment confirming an arbitral award of $5,000,000 in punitive damages, where the arbitrators found no compensable harm and awarded no compensatory damages, did the Supreme Court of Connecticut err by holding, in conflict with a decision of the Supreme Court of Alabama, that judicially confirmed arbitral punitive damages awards are exempt from the due process limits announced by this Court in *BMW of North America, Inc. v. Gore* and *State Farm Mutual Automobile Insurance Co. v. Campbell*?

LIST OF PARTIES AND RULE 29(6) STATEMENT

The names of all parties to the proceedings in the Connecticut Supreme Court are in the case caption.

Petitioner Vertrue Incorporated (formerly known as MemberWorks Incorporated) is a publicly-held Delaware corporation (NASDAQ: VTRU) with no parent company. More than ten percent of its stock is owned by Neuberger Berman LLC, which is a wholly-owned subsidiary of Lehman Brothers Holdings Inc., a publicly-held company.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Vertrue Incorporated (formerly known as MemberWorks Incorporated) ("MemberWorks")[1] respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of Connecticut in this case.

OPINIONS BELOW

The Connecticut Supreme Court's opinion is reported at 273 Conn. 634, 872 A.2d 423 (2005), and reprinted in the Appendix ("App.") at 1a-55a. The Connecticut Supreme Court's order transferring the appeal to itself before decision by the Connecticut Appellate Court is reprinted at 56a. The order of the Connecticut Superior Court confirming the arbitral award, App. at 57a-78a, is unofficially reported at 35 Conn. L. Rptr. 153 (Conn. Super. Ct. May 22, 2003). The December 12, 2002 arbitral award, App. at 79a-83a, is unreported.

JURISDICTION

The Connecticut Supreme Court's final judgment entered on May 17, 2005.[2] This Court has jurisdiction to review the judgment under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which provides, in relevant

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[1] This petition refers to "MemberWorks," the name of the predecessor corporation involved in the events in question and in the Connecticut Supreme Court's opinion. Because of a recent name change and corporate reorganization, petitioner Vertrue Incorporated is the successor in interest to MemberWorks for all purposes relevant to this matter.

[2] Pursuant to section 77-1 of the Connecticut Rules of Appellate Procedure, judgment automatically entered on May 17, 2005, the date the decision was officially released and printed in the *Connecticut Law Journal*.

part, that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV, § 1.

The case also involves provisions of the Connecticut Unfair Trade Practices Act, CONN. GEN. STAT. §§ 42-110b, -110g, & -110c, which are reprinted at 84a-88a. The case also involves Connecticut's arbitration act, CONN. GEN. STAT. §§ 52-417, -418, & -421, which provides, among other things, that

> [t]he judgment or decree confirming, modifying or correcting an [arbitral] award . . . shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment or decree in a civil action; and it may be enforced as if it had been rendered in a civil action in the court in which it was entered.

Id. § 52-421(b). These statutes are reprinted at 88a-91a.

STATEMENT

This case stands at the crossroads of two significant lines of this Court's jurisprudence: its repeated affirmation that the Due Process Clause bars grossly excessive punitive damages awards, and its strong support for arbitration. The Connecticut Supreme Court's decision threatens both lines of precedent and the critical public policies they reinforce.

Here, a Connecticut trial court entered judgment confirming an arbitral award of $5,000,000 in punitive damages under the Connecticut Unfair Trade Practices Act ("CUTPA"), where the arbitrators awarded zero compensatory damages because the claimant did not prove any compensable harm. The court acted under its statutory authority to review arbitral awards and render them enforceable as state court judgments, thus putting the imprimatur of the State on a result that could not have withstood constitutional scrutiny if it arose from a trial. The Connecticut Supreme Court affirmed, holding that due process limits on punitive damages do not apply at all to judicial confirmation of an arbitral award, "*regardless of how excessive the award may be.*" App. at 7a (emphasis

added). Although punitive damages under CUTPA serve a public purpose, and the State's judiciary plays an integral role in enforcing arbitral awards (including a review for violations of state public policy), the court found no state action in the judicial review and confirmation of an arbitral award or in the entry of judgment enabling the coercive power of the State.

This decision, and a similar ruling by the Eleventh Circuit, will leave courts powerless to address even the most outrageous arbitral awards of punitive damages, giving parties little incentive to pursue arbitration rather than litigation in the courts. Moreover, the decision squarely conflicts with a recent Alabama Supreme Court decision holding that judicial confirmation of an arbitral punitive damages award warrants review under this Court's due process precedents. Litigants contemplating arbitration thus face the reality that their due process protections against grossly excessive punitive damages awards hinge on the jurisdiction in which an award will receive judicial review. This conflict and the lower-court confusion it reveals demonstrate the need for this Court's guidance regarding the constitutional limits on punitive damages awarded in arbitration and confirmed by courts.

A. The Parties and Their Contract

This case involves a commercial dispute between two businesses: petitioner MemberWorks and respondent MedValUSA Health Programs, Inc. ("MedVal"). MemberWorks offers membership programs providing discounts on many products and services, including health care. MemberWorks also sells these programs wholesale to resellers who market under their own labels. MedVal was a startup company formed to sell discount health care programs through community-based independent sales representatives.

In 1998, MemberWorks and MedVal entered into a contract under which MedVal would purchase MemberWorks' health care program and resell it under a MedVal name. App. at 92a-104a. Under the contract, MedVal agreed to a sales quota of 10,000 memberships to be sold

within eighteen months of an agreed-upon start date. In return, MemberWorks would ensure that members received discounts from one of its physician networks. MemberWorks also agreed to provide marketing materials and customer support. The parties agreed to arbitrate disputes arising under the contract:

> [A]ny dispute arising [out] of or relating to this Agreement . . . will be finally settled by arbitration in accordance with the rules of the American Arbitration Association and the United States Arbitration Act[,] and judgment upon the award rendered by the arbitrator(s) may be entered by any court with jurisdiction.

App. at 103a.

During the first year of the contract, the parties' relationship deteriorated, and MedVal sold no memberships. In hopes of salvaging the enterprise, the parties amended their contract in 1999. App. at 105a-121a. Under the amended contract, MemberWorks agreed to increase the number and density of physicians in the program, reduce MedVal's initial sales quota, and accept a new start date. The amendment did not alter the terms of the original arbitration clause. Despite this amendment, the parties' relationship did not improve, and by the amended start date MedVal had sold only a single membership. In May 2000, MedVal notified MemberWorks that it was ceasing business operations. App. at 3a.

B. Arbitration Proceedings

On September 13, 2000, MedVal filed an arbitration demand with the American Arbitration Association, alleging that MemberWorks was responsible for its business failure. Among other things, MedVal alleged that MemberWorks had breached the contract by failing to notify MedVal regarding its communications with the physician network, its contracts with other physician networks, and changes to MedVal's program. MedVal also claimed that MemberWorks had breached the duty of good faith and fair dealing.